

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA

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In re:

New Grange, Inc.

Bky. 11-43417  
Ch. 11

Debtor.

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**NOTICE OF HEARING AND EXPEDITED MOTION FOR ORDER AUTHORIZING  
DEBTOR TO PAY PRE-PETITION WAGES AND EMPLOYEE COMPENSATION**

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TO: The entities specified in Local Rule 9013-3:

1. New Grange, Inc., the debtor in the above referenced bankruptcy proceeding, by and through its undersigned attorneys, moves the court for the relief requested below and gives notice of hearing.
2. The court will hold a hearing on this motion at 11:15 a.m. on May 19, 2011, before the Honorable Dennis D O'Brien, Courtroom 2B, U.S. Courthouse, 316 North Robert Street, St Paul, Minnesota 55101 (the "Hearing").
3. Any response to this motion as to issues to be considered at the hearing must be filed and delivered prior to the hearing. **Unless a response opposing the motion is timely filed, the court may grant the relief requested in the motion without a hearing.**
4. This court has jurisdiction over this motion under 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on May 13, 2011. The case is now pending before this court.

5. This motion arises under 11 U.S.C. §§105(a), 363, 1107 and 1108. This motion is filed under Fed.R.Bankr. 9014 and Local Rules 9013-1 through 9013-3. The debtor requests an order authorizing payment of prepetition wages and compensation to its employees.

### **FACTUAL BACKGROUND**

6. The debtor is a Minnesota corporation primarily engaged in the business of the operating a restaurant called The Melting Pot located in downtown Minneapolis, Minnesota. The debtor has been in that location and operating as a franchisee of The Melting Pot since March of 2003.

### **PRE-PETITION EMPLOYEE WAGES AND COMPENSATION**

7. As of the petition date, the debtor employed approximately forty-seven employees in various restaurant services including chefs and kitchen staff, bar staff and wait staff, bus attendants, hosts, managers and other hospitality employee positions. The debtor anticipates that it will retain this employee workforce as the debtor deems necessary to its reorganization.

8. The debtor pays its hourly employees bi-weekly on Fridays in arrears such that each two week pay period ends on the Monday that falls eleven days prior to the pay date. Accordingly, the debtor's first post-petition scheduled payroll was to occur on May 27, 2011 for the period May 3 to May 16, 2011. The accrued and unpaid hourly employee wages as of the petition date is approximately \$12,575.91 for the period May 3 through May 13, 2011.

9. The debtor pays its managers bi-weekly on Fridays in arrears such that each two week period ends on the Monday that falls seven days prior to the pay date. Accordingly, the debtor's first post-petition scheduled payroll was to occur on May 20, 2011 for the period May 1

to May 14, 2011. The accrued and unpaid manager wages as of the petition date is approximately \$12,306.88 for the period May 1 through May 13, 2011.

10. In addition, other employee compensation, including payroll checks that were issued to the debtor's employees prior to the petition date which may not have been presented for payment or cleared the banking system, may not have been paid as of the petition date. While the debtor additionally requests payment on any such former compensation, the debtor estimates that any such liability does not exceed \$8,000 in aggregate.

11. The debtor estimates that the total unpaid prepetition compensation—including all wages and other employee compensation referenced herein—that has been earned prior to the petition date but remains unpaid to date—will be approximately \$24,882.79. The debtor seeks authority to pay this earned employee compensation.

12. No single employee of the debtor will be paid in excess of \$10,000 in the aggregate on account of prepetition compensation of any kind.

13. Two of the employees who are owed pre-petition wages are insiders. David Ahern is the Vice President and Secretary and a 50% owner of the debtor. He is owed \$2301.96 of pre-petition wages for his work as one of the restaurant's managers. Brian Jaedike is the President and Treasurer and a 50% owner of the debtor. He is owed \$2987.97 of pre-petition wages for his work as one of the restaurant's managers.

14. The continued and uninterrupted service of the debtor's employees is critical to the debtor's ability to continue as an ongoing concern and to reorganize in this proceeding. The debtor seeks expedited relief by this motion because any delay in making payments described herein will severely damage the debtor's relationship with its employees. Accordingly to minimize the employee hardship and, moreover, ensure the availability of employees including

several critical employees, the debtor seeks to continue to pay employee compensation earned but unpaid as of the petition date and in the ongoing ordinary course of business.

15. If the relief requested herein is not granted, the employees will suffer great hardship and financial difficulties. If the payments are not made, the debtor believes a number of the employees will seek other employment in the hospitality industry, and the debtor will suffer immediate and irreparable harm. Unless the relief requested is granted, the debtor may be deprived of the opportunity to reorganize under the Bankruptcy Code.

16. It is in the best interests of the debtor and its creditors that the court authorizes the employee wage payments described herein to avoid hardship to the employees and also to maintain and preserve the viability of the debtor's ongoing business.

#### **WITNESSES**

17. The debtor reserves the right, if necessary, to offer the testimony of David Ahern, Vice President of the debtor, in support of this motion.

WHEREFORE, the debtor respectfully requests that the court enter an order authorizing the debtor to pay the prepetition wages and employee compensation set forth in this motion, and granting such other and further relief as is just and proper.

Respectfully submitted,

Dated: May 18, 2011.

**MORRIS LAW GROUP, P.A.**

By: /s/ Ann P Johnson  
Ann P Johnson (#0390400)  
Morris Law Group, P.A.  
7241 Ohms Lanes, Suite 275  
Edina, MN 55439  
Phone (952) 832-2000  
Fax (952) 832-0020

Verification

I, David Ahern, Vice President of the debtor herein, declare under penalty of perjury that the facts set forth in the foregoing Notice of Hearing and Expedited Motion for an Order Authorizing Debtor to Use Cash Collateral are true and correct, to the best of my knowledge, information and belief.

Dated: May 17, 2011

By: 

David Ahern

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA**

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**MEMORANDUM OF LAW**

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New Grange, Inc., the debtor in the bankruptcy proceedings, through its undersigned attorneys, submits this Memorandum in support of its Motion for Order Authorizing Debtor to Pay Pre-Petition Wages and Employee Compensation. A hearing has been scheduled to consider the motion on May 19, 2011.

**FACTUAL BACKGROUND**

The factual support for the debtor's motion and this memorandum is set forth in the verified motion.

**LEGAL ARGUMENT**

As a general rule, a chapter 11 debtor is prohibited, outside of the plan confirmation process, from making payment of selected pre-petition claims, including the debtor's employees' claims for "wages, salaries, or commission, including vacation, severance, and sick leave pay" earned within 180 days before the petition date are afforded unsecured priority status to the extent of \$10,000 per employee. 11 U.S.C. §§ 507(a)(4). Such employee compensation would normally be paid in full under a confirmed plan of reorganization. However in some instances when the payment of a pre-petition liability is vital to the reorganization proceeding, courts have exercised its discretionary powers under 11 U.S.C. § 105 and authorized a debtor to pay certain

pre-petition claims of employees for wages and employee compensation which accrued in the days immediately preceding the bankruptcy filing. *See In re Eagle-Pitcher Industries, Inc.*, 124 B.R. 1021 (Bky S.D. Ohio 1991) (debtor authorized to pay prepetition unsecured claims of key suppliers not otherwise entitled to priority treatment under Section 507); *In Re Ionosphere Clubs, Inc. and Eastern Airlines, Inc.*, 98 B.R. 174 (Bky. S.D.N.Y. 1989) (court authorized payment of pre-petition wages and benefits beyond § 507(a)(3) limit); *In re Gulf Air, Inc.*, 112 B.R. 152 (Bky W.D. La. 1989) (court applied "necessity of payment" doctrine and authorized payment of certain pre-petition employee related expenses including wages, salary and employee benefits); *In re Chateauguay Corp*, 80 B.R. 279 (S.D.N.Y. 1987) (District Court affirmed the bankruptcy court order authorizing LTV Corp. to pay certain pre-petition wages and salaries, expense reimbursements, and employee benefits); *cf. see, Official Committee of Equity Security Holders v. Mabey*, 832 F.2d 299 (4th Cir. 1987); *In re FCX, Inc.*, 60 B.R. 405 (E.D.N.C. 1986).

Payment of pre-petition employee wages and employee compensation which accrued prior to the petition date is necessary to the debtor's ongoing reorganization efforts and is in the best interest of creditors. In order to proceed with an effective reorganization, the debtor must maintain its employees, most of which live from paycheck to paycheck. Employee continuity, morale and performance are essential to the debtor's reorganization efforts. If the relief requested herein is not granted, the debtor submits that it may lose the services of many of its employees immediately and without notice. If this were to occur, the interruption in the debtor's ability to serve its customers will cause immediate and irreparable harm to the debtor and severely impair its reorganization efforts. This court may exercise its discretionary powers under Section 105 and grant the relief requested herein if the court determines that such payments are in the best interest of creditors and necessary to a successful reorganization. *In re Gulf Air, Inc.*, 112 B.R. at 152.

The debtor requests authority to make payment of pre-petition wages and employee compensation which are entitled to priority treatment under 11 U.S.C. § 507(a).

**CONCLUSION**

The debtor, through its undersigned attorneys, respectfully requests that its motion be granted and that it be authorized to pay pre-petition wages and employee compensation as set forth in the motion.

Dated: May 18, 2011.

**MORRIS LAW GROUP, P.A.**

By: /s/ Ann P Johnson  
Ann P Johnson (#0390400)  
Morris Law Group, P.A.  
7241 Ohms Lanes, Suite 275  
Edina, MN 55439  
Phone (952) 832-2000  
Fax (952) 832-0020



**UNITED STATES BANKRUPTCY COURT  
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**UNSWORN CERTIFICATE OF SERVICE**

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I, Ann P Johnson, do hereby certify that on May 18, 2011 the below listed documents were filed with the Clerk of Court via ECF, and served upon all parties in interest and other entities specified in Local Rule 9013-3 listed on the attached service list by first class U.S. mail.

1. Notice of Hearing and Motion for Order Authorizing Debtor to Pay Pre-Petition Wages and Employee Compensation,
2. Memorandum of Law, and
3. Proposed Order.

Via e-notice by the U.S. Bankruptcy Court to the following:

Sarah Wencil on behalf of U.S. Trustee US Trustee: [sarah.j.wencil@usdoj.gov](mailto:sarah.j.wencil@usdoj.gov)

US Trustee: [ustpreion12.mn.ecf@usdoj.gov](mailto:ustpreion12.mn.ecf@usdoj.gov)

Ann Johnson, attorney for debtor: [ajohnson@morrislawmn.com](mailto:ajohnson@morrislawmn.com)

Via facsimile to the following:

Internal Revenue Service Office of District Counsel	651-726-7360
Collection Division of MN Department of Revenue	651-282-2817
United States Attorney for the District of Minnesota	612-664-5788
District Director of Internal Revenue Service	651-312-7970
US Bank Bankruptcy Department	513-979-3223

Via by U.S. mail to the following:

New Grange, Inc.  
11110 Sweet Water Path  
Woodbury, MN 55129

LUXURY MEDIA GROUP  
MARY-JO JENSEN CARTER, TRUSTEE  
1257 GUN CLUB ROAD  
WHITE BEAR LAKE, MN 55110

ADVANCE RESTAURANT FINANCE  
3 WATERS PARK DRIVE, SUITE 231  
SAN MATEO, CA 94403

AURORA LOAN SERVICES  
PO BOX 1706  
SCOTTSBLUFF, NE 69363-1706

MINNESOTA TWINS  
1 TWINS WAY  
MINNEAPOLIS, MN 55403

BIX PRODUCE  
1415 L'ORIENT STREET  
ST. PAUL, MN 55117

MSP COMMUNICATIONS  
220 SOUTH SIXTH STREET, SUITE 500  
MINNEAPOLIS, MN 55402

ALLY-GMAC  
ALLY AUTOMOTIVE FINANCING  
PO BOX 380901  
BLOOMINGTON, MN 55438

SKJOLD-BARTHEL  
222 9TH STREET SOUTH, #3220  
MINNEAPOLIS, MN 55402-3398

METRO RETAIL  
50 GROVELAND TERRACE, SUITE A  
MINNEAPOLIS, MN 55403-1100

VOLKSWAGEN CREDIT  
PO BOX 17497  
BALTIMORE, MD 21297-1497

ASSOCIATED BANK  
740 MARQUETTE AVENUE SOUTH  
MINNEAPOLIS, MN 55402-2303

INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY  
P.O. BOX 7346  
PHILADELPHIA, PA 19101-7346

MINNESOTA DEPARTMENT OF REVENUE  
BANKRUPTCY SECTION  
P.O. BOX 64447-BKY  
ST. PAUL, MN 55164-0447

MINNEAPOLIS DOWNTOWN COUNCIL  
81 SOUTH 9TH STREET, STE 260  
MINNEAPOLIS, MN 55401

MINNEAPOLIS FINANCE DEPARTMENT  
CITY HALL, RM 325  
350 SOUTH 5TH ST  
MINNEAPOLIS, MN 55415

MINNESOTA DEPARTMENT OF HUMAN  
SERVICES  
CHILD SUPPORT ENFORCEMENT DIVISION  
PO BOX 64946  
ST. PAUL, MN 55164-0946

WASHINGTON COUNTY  
PO BOX 200  
STILLWATER, MN 55085-0200

District Counsel of the Internal Revenue Service  
380 Jackson Street, Suite 650  
St. Paul, MN 55101

District Director of the Internal Revenue Service  
30 E. 7<sup>th</sup> Street  
Stop 5700, Suite 1222  
St. Paul, MN 55101

Collection Division of the Minnesota Department of  
Revenue  
Bankruptcy Section  
P.O. Box 64447  
St. Paul, MN 55164-0447

United States Attorney for the District of Minnesota  
600 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

Dated: May 18, 2011.

/s/ Ann P Johnson  
Ann P Johnson

**UNITED STATES BANKRUPTCY COURT  
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In re:

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**ORDER AUTHORIZING DEBTORS TO PAY  
PRE-PETITION WAGES AND EMPLOYEE COMPENSATION**

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This case came on for hearing before the court upon the motion of New Grange, Inc. for an order authorizing the debtor to pay prepetition wages and other employee compensation; and it appearing that the relief requested is necessary to preserve the debtor's ongoing operations, and is in the best interests of the debtor's estate and its creditors; and in light of the expedited nature of the relief requested and it appearing that sufficient notice has been given; and appearances having been noted as on the record; and the court having determined that the interim relief requested is necessary to avert a serious threat to the debtor's efforts in this case,

**IT IS ORDERED:**

1. The debtor's motion for an expedited relief is granted;
2. The debtor's motion is granted in its entirety, and the debtor is hereby authorized to pay pre-petition wages and employee compensation as described in the motion to the non-insider employees listed in the Exhibit A attached herein, to the extent that such claims do not exceed the limits set forth in 11 U.S.C. § 507(a)(4).

Dated: \_\_\_\_\_, 2011.

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Dennis D. O'Brien  
United States Bankruptcy Judge

## Exhibit A

Employees authorized for payment of pre-petition compensation and approximate compensation owed:

### Managers

Lee Johnson 965 Laurel Ave St. Paul, MN 55104 Owed: \$1178.76	Rashanda Copper 804 27th Ave NE #2 Minneapolis, MN 55418 Owed: \$262.21	Donny Fisch 8133 E Bloomington Fr, Apt 101 Bloomington, MN 55420 Owed: \$439.21
Katie Troutman 965 Laurel Ave St. Paul, MN 55104 Owed: \$2059.70	Patrick Abudo 3536 N Emerson Ave Minneapolis, MN 55412 Owed: \$172.77	Joshua Florhaug 8260 N. Hayden Rd Scottsdale, AZ 85258 Owed: \$144.93
Molly Ahern 10314 Arrowwood Drive Eden Prairie, MN 55347 Owed: \$1325.12	Megan Anderson 3824 26 <sup>th</sup> Ave S Minneapolis, MN 55406 Owed: \$188.90	Manuel Guallpa 2729 Park St Minneapolis, MN Owed: \$336.96
Lisa Dodd 987 Fuller Ave St. Paul, MN 55104 Owed: \$1327.75	Marco Aucapina 1122 23 <sup>rd</sup> St NE, Apt 1 Minneapolis, MN 55418 Owed: \$199.67	Maria Guasco 2929 14 <sup>th</sup> Ave A Minneapolis, MN 55408 Owed: \$288.80
Sergio Carbajal 10632 River View Place Coon Rapids, MN 55433 Owed: \$1125.62	Francisco Campos 2718 Chicago Ave S Minneapolis, MN 55407 Owed: \$426.74	Kevin Harrington 1100 18 <sup>th</sup> Ave SE #3 Minneapolis, MN 55414 Owed: \$286.90
Dave Ahern 567 Witt Court Vadnais Heights, MN 55127 Owed: \$2301.96	Enrique Carbajal 10632 Riverview Pl NW Coon Rapids, MN 55433 Owed: \$343.90	Israel Hernandez 2200 Pillsbury Ave Minneapolis, MN 55408 Owed: \$526.70
Brian Jaedike 11110 Sweetwater Path Woodbury, MN 55123 Owed: \$2987.97	Silvia Chaves 10632 Riverview Pl NW Coon Rapids, MN 55433 Owed: \$814.37	Christopher Hershey 8355 Valentine Terrace Bloomington, MN 55431 Owed: \$124.20
<u>Hourly Employees</u>	Daniel Cornforth 2645 Dupont Ave S, Apt 1 Minneapolis, MN 55408 Owed: \$227.58	Melissa Holland 2608 Pillsbury Ave S, #2 Minneapolis, MN 55408 Owed: \$302.11

Walter Hornbrook  
3914 29<sup>th</sup> Ave S  
Minneapolis, MN 55406  
Owed: \$284.52

Kaitlin Karow  
1540 Thomas Lake Pointe  
Rd  
Eagan, MN 55122  
Owed: \$534.80

Emily Kudrie  
10300 Little Road  
Bloomington, MN 55437  
Owed: \$319.32

Jennifer Kudrie  
1300 Yale Place, Apt. 230  
Minneapolis, MN 55403  
Owed: \$429.74

Kyle Kudrie  
3354 Alden Pool Lane  
Eagan, MN 55121  
Owed: \$248.04

James Kuettner  
2011 3<sup>rd</sup> Ave S, Apt 110  
Minneapolis, MN  
Owed: \$96.60

Thomas Murphy  
2103 W 90<sup>th</sup> St, #2  
Bloomington, MN 55431  
Owed: \$254.26

Abraham Nunez  
10632 Riverview Pl NM  
Coon Rapids, MN 55433  
Owed: \$824.69

Mark Nusbaum  
2216 Buckingham Lane  
Moundsview, MN 55112  
Owed: \$259.84

Rachel Odean  
11500 Keating Ave  
Burnsville, MN 55337  
Owed: \$330.24

Joaquin Palmer  
3916 Grand Ave, Apt. 1  
Minneapolis, MN 55409  
Owed: \$274.99

Polinario Pauta  
118 29<sup>th</sup>  
Minneapolis, MN 55408  
Owed: \$451.35

Maria Sanchez  
3500 Oakland Ave, #2  
Minneapolis, MN 55407  
Owed: \$355.60

David Schaefer  
4501 78<sup>th</sup> Ave  
Brooklyn Park, MN 55443  
Owed: \$278.18

Alexandra Siguencia  
952 Lory Ave NE  
Minneapolis, MN 55418  
Owed: \$219.68

Rosa Simbaina-Naula  
118 29<sup>th</sup>  
Minneapolis, MN 55408  
Owed: \$424.26

TaVanni Singleton  
225 15<sup>th</sup> St W, #409  
Minneapolis, MN 55403  
Owed: \$476.80

Justin Smith  
3214 31<sup>st</sup> Ave S  
Minneapolis, MN 55406  
Owed: \$438.77

William Smith  
257 Lafayette Ave, #201  
Buffalo, MN 14213  
Owed: \$398.94

Leobarda Vasquez  
2743 11<sup>th</sup> Ave S, Apt 13  
Minneapolis, MN 55407  
Owed: \$430.95

Victor Villafan  
7332 5<sup>th</sup> Ave S  
Richfield, MN 55423  
Owed: \$438.60